

Advocacy Through Adjudication

By Frank Benedetto and J.-C. Rioux
Sponsored by Flaherty McCarthy LLP

Advocacy encompasses a broad range of processes to support a cause. It does not only involve what may be considered the pinnacle of advocacy for lawyers – trials and appeals. It has become more difficult for lawyers regardless of your years at the Bar, to enter the arena of a trial or appeal. It is important in certain cases to have a decision. There are opportunities in the area of benefits and negligence law to advocate in formal adjudication settings. There are ways to get advocacy experience, despite the present dearth of opportunities to do trials and appeals. There are administrative tribunals, there is the Small Claims Court and there are summary judgment motions in Superior Court, and private arbitrations.

Every case that gets adjudicated requires the same skills of the advocate. She must make an opening submis-

sion, do examination in chief and cross-examination, and make a closing argument on the law and evidence. The advocate's basic tool-kit is the same, whether the case is before a judge alone, a judge and jury, an administrative tribunal or a private arbitrator. There are differences in the style, in terms of how to present a case most effectively, from one forum to another, but the similarities are more important than the differences.

The Licence Appeal Tribunal which deals with Statutory Accident Benefits disputes provides the opportunity to have preliminary and full hearings. Hearings can be in writing, oral, or a combination of both. Hearings can deal with procedural issues, substantive issues, or both. Advocates may be afforded the opportunity to enter the arena of a dispute and deliver an opening statement, conduct examination in chief and cross-examination and make a closing argument.

In the Superior Court, advocates should be mindful of *Hryniak*. Summary Judgment may be appropriate in

cases involving a limitation period or a strong liability defence. The Supreme Court of Canada has told us that we should be flexible about the process of getting evidence in the record and getting a case adjudicated. Putting some evidence in by affidavit and some evidence in through live witnesses may provide some clients (and their advocates) with an opportunity to get a case adjudicated with less expense than would be required by the usual trial procedures.

For those who want the experience of advocating a case through to adjudication, there are ways to get the experience in a way that benefits your client. However, you need to be creative and approach cases as though having a dispute adjudicated in an inexpensive but broadly fair and reasonable way is a good thing. Waiting for a decision is important to your professional development. Understanding the decision is just as important, and you should experience all aspects of adjudication advocacy in order to make you a better advocate.

CHOSEN AGAIN

HONOURED TO BE ONE OF **CANADA'S TOP 10**
INSURANCE DEFENCE LITIGATION BOUTIQUE FIRMS
As Voted By *Canadian Lawyer Magazine*

Forward Thinking Strategic Litigators

WHEN YOU HIRE **ONE OF US**, YOU HIRE **ALL OF US**



TORONTO | WHITBY | OTTAWA | FMLAW.CA